

AMENDED IN SENATE APRIL 22, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 263

Introduced by Senator Monning
(Principal coauthor: Assembly Member Achadjian)

February 13, 2013

An act to amend Sections 7028 and 7114 of, to add Section 7026.4 to, and to repeal and add ~~Sections 7031 and~~ *Section* 7118 of, the Business and Professions Code, relating to contractors.

LEGISLATIVE COUNSEL'S DIGEST

SB 263, as amended, Monning. Contractors: unlicensed activity.

The Contractors' State License Law provides for the licensure and regulation of contractors by the Contractors' State License Board within the Department of Consumer Affairs. The law prohibits a person engaged in the business or acting in the capacity of a contractor from bringing an action for collection of compensation for the performance of an act or contract for which a contractor's license is required without alleging that he or she was a duly licensed contractor at all times during the performance of that act or contract.

~~This bill, instead, would require as a condition of bringing an action to collect payment for the performance of any act or contract that a contractor be duly licensed during the performance of the act or contract. The bill would define "duly licensed" for purposes of these provisions, this provision and purposes of the Contractors' state License Law, and would make other conforming changes.~~

The Contractors' State License Law makes it a misdemeanor for a person to engage in the business or act in the capacity of a contractor without having a license, unless the person is particularly exempted.

This bill, instead, would provide that, unless exempted, it is a misdemeanor for a person to engage in the business or act in the capacity of a contractor if the person either has never been licensed pursuant to the Contractors' State License Law, or the person was a licensee, but performed acts covered by the law under a license that was inactive, expired, revoked, or under suspension for any reason. By changing the definition of a crime, the bill would impose a state-mandated local program.

The Contractors' State License Law provides that ~~entering it is a cause for disciplinary action for a person licensed pursuant to that law to enter into a contract with a contractor while the contractor is not licensed—constitutes a cause for disciplinary action.~~ That law also provides that aiding or abetting an unlicensed person to evade the law, or engaging in specified acts with an unlicensed person with the intent to evade the law, constitutes a cause for disciplinary action.

This bill, instead, would provide that entering into a contract with any person *when* that *contract* is performed during a period in which that person's license was inactive, expired, revoked, or under suspension is a cause for discipline if the purpose of the contract is for that person to perform an act subject to licensure under the law. The bill also would define "unlicensed person" for purposes of these provisions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 7026.4 is added to the Business and
- 2 Professions Code, to read:
- 3 7026.4. (a) A person shall be deemed "duly licensed" or "duly
- 4 licensed to act in the capacity of a contractor" for purposes of this
- 5 chapter if both of the following conditions are met:
- 6 (1) The act was performed under a board-issued license during
- 7 a period in which the license was not inactive, expired, revoked,
- 8 or under suspension for any reason.

(2) The act falls within a license classification in which the licensee was authorized to engage, or is incidental and supplemental as provided under Section 7059, and defined in Section 831 of Division 8 of Title 16 of the California Code of Regulations.

(b) Any person that does not meet the conditions specified in paragraphs (1) and (2) of subdivision (a) shall be deemed unlicensed, except as otherwise provided in this chapter.

SEC. 2. Section 7028 of the Business and Professions Code is amended to read:

7028. (a) Unless exempted from this chapter, it is a misdemeanor for a person to engage in the business or act in the capacity of a contractor within this state under either of the following conditions:

(1) The person has never been licensed in accordance with this chapter.

(2) The person was a licensee, as defined in Section 7096, but performed acts covered by this chapter under a license that was inactive, expired, revoked, or under suspension for any reason.

(b) A first conviction for the offense described in this section is punishable by a fine not exceeding five thousand dollars (\$5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment.

(c) If a person has been previously convicted of the offense described in this section, unless the provisions of subdivision (d) are applicable, the court shall impose a fine of 20 percent of the contract price, or 20 percent of the aggregate payments made to, or at the direction of, the unlicensed person, or five thousand dollars (\$5,000), whichever is greater, and, unless the sentence prescribed in subdivision (d) is imposed, the person shall be confined in a county jail for not less than 90 days, except in an unusual case where the interests of justice would be served by imposition of a lesser sentence or a fine. If the court imposes only a fine or a jail sentence of less than 90 days for second or subsequent convictions under this section, the court shall state the reasons for its sentencing choice on the record.

(d) A third or subsequent conviction for the offense described in this section is punishable by a fine of not less than five thousand dollars (\$5,000) nor more than the greater amount of ten thousand dollars (\$10,000) or 20 percent of the contract price, or 20 percent

1 of the aggregate payments made to, or at the direction of, the
2 unlicensed person, and by imprisonment in a county jail for not
3 more than one year or less than 90 days. The penalty provided by
4 this subdivision is cumulative to the penalties available under all
5 other laws of this state.

6 (e) A person who violates this section is subject to the penalties
7 prescribed in subdivision (d) if the person was named on a license
8 that was previously revoked and, either in fact or under law, was
9 held responsible for any act or omission resulting in the revocation.

10 (f) If the unlicensed person engaging in the business of or acting
11 in the capacity of a contractor has agreed to furnish materials and
12 labor on an hourly basis, “the contract price” for the purposes of
13 this section means the aggregate sum of the cost of materials and
14 labor furnished and the cost of completing the work to be
15 performed.

16 (g) Notwithstanding any other law, an indictment for any
17 violation of this section by an unlicensed person shall be found,
18 or an information or complaint filed, within four years from the
19 date of the contract proposal, contract, completion, or abandonment
20 of the work, whichever occurs last.

21 (h) For any conviction under this section, a person who utilized
22 the services of the unlicensed person is a victim of crime and is
23 eligible, pursuant to subdivision (f) of Section 1202.4 of the Penal
24 Code, for restitution for economic losses, regardless of whether
25 he or she had knowledge that the person was unlicensed.

26 ~~SEC. 3.—Section 7031 of the Business and Professions Code is~~
27 ~~repealed.~~

28 ~~SEC. 4.—Section 7031 is added to the Business and Professions~~
29 ~~Code, to read:~~

30 ~~7031.—(a) Except as provided in subdivision (e), a contractor~~
31 ~~shall be duly licensed at all times during the performance of any~~
32 ~~act or contract in order to bring an action to collect payment for~~
33 ~~the performance of that act or contract. This provision does not~~
34 ~~apply to contractors who are each individually licensed under this~~
35 ~~chapter but who fail to comply with Section 7029.~~

36 ~~(b) Except as provided in subdivision (e), a person who utilizes~~
37 ~~the services of an unlicensed person who engages in the business~~
38 ~~or acts in the capacity of a contractor may recover all compensation~~
39 ~~paid to that person.~~

1 ~~(e) If a security interest is taken to secure payment for the~~
2 ~~performance of any act or contract for which a license is required~~
3 ~~by this chapter, the security interest is unenforceable if the person~~
4 ~~performing the act or contract is not duly licensed at all times~~
5 ~~during the performance of the act or contract.~~

6 ~~(d) If licensure or proper licensure is disputed, it is the burden~~
7 ~~of a purported licensee to provide proof of licensure by production~~
8 ~~of a verified certificate of licensure from the board.~~

9 ~~(e) Notwithstanding subdivision (b) of Section 143, a court may~~
10 ~~determine that there has been substantial compliance with licensure~~
11 ~~requirements under this section if the person who engaged in the~~
12 ~~business or acted in the capacity of a contractor was duly licensed~~
13 ~~at the time the contract was executed, but who subsequently~~
14 ~~performed work in a classification for which the person was not~~
15 ~~licensed, under license suspension, or using an expired or inactive~~
16 ~~license. That person may pursue payment for any work that was~~
17 ~~performed on the contract while duly licensed but shall be~~
18 ~~precluded from pursuing payment for work performed on the~~
19 ~~contract while found to be working in a classification for which~~
20 ~~the person was not licensed, under license suspension, or under~~
21 ~~an expired or inactive license. A person who utilized the services~~
22 ~~of that person may recover the compensation paid to that person~~
23 ~~for work performed on the contract while found to be working in~~
24 ~~a classification for which that person was not licensed, under~~
25 ~~license suspension, or under an expired or inactive license.~~

26 ~~SEC. 5:~~

27 ~~SEC. 3.~~ Section 7114 of the Business and Professions Code is
28 amended to read:

29 7114. (a) All of the following shall constitute a cause for
30 disciplinary action pursuant to this chapter:

31 (1) Aiding or abetting an unlicensed person to evade the
32 provisions of this chapter.

33 (2) Combining or conspiring with an unlicensed person with
34 the intent to evade the provisions of this chapter.

35 (3) Allowing one's license to be used by an unlicensed person
36 with the intent to evade the provisions of this chapter.

37 (4) Acting as agent, partner, associate, or otherwise, of an
38 unlicensed person with the intent to evade the provisions of this
39 chapter.

(b) A licensee who is found by the registrar to have violated subdivision (a) is subject, in accordance with this article, to the registrar's authority to order payment of a specified sum to an injured party, including, but not limited to, payment for any injury resulting from the acts of the unlicensed person.

(c) For the purposes of this section, the term "unlicensed person" shall apply only to a person that has never been licensed in accordance with this chapter, or has performed acts covered by this chapter under a license that was inactive, expired, revoked, or under suspension for any reason.

~~SEC. 6.~~

~~SEC. 4.~~ Section 7118 of the Business and Professions Code is repealed.

~~SEC. 7.~~

~~SEC. 5.~~ Section 7118 is added to the Business and Professions Code, to read:

7118. It is a cause for discipline for any licensee to enter into a contract with any person that is not in compliance with paragraph (1) of subdivision (a) of Section 7026.4, if the purpose of the contract is for that person to perform an act that is subject to licensure under this chapter.

~~SEC. 8.~~

~~SEC. 6.~~ No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.